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| 10/645,080      | 08/21/2003  | Erik John Hasenochrl | 9344                | 6935             |

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| EXAMINER |
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AHMED, HASAN SYED

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1615

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 03/08/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/645,080 | <b>Applicant(s)</b><br>HASENOEHRL ET AL. |  |
|                              | <b>Examiner</b><br>Hasan S. Ahmed    | <b>Art Unit</b><br>1615                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-24, 26-30 and 32-41 is/are pending in the application.
- 4a) Of the above claim(s) 36-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-24, 26-30, and 32-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

- Receipt is acknowledged of applicants': (1) amendment/remarks and (2) terminal disclosure, all filed on 5 December 2006.
- The amendment filed on 5 December 2006 has been entered.
- The 35 USC 112(2) rejection is withdrawn in light of the amendment.
- The double patenting rejections are withdrawn in light of the terminal disclaimer.
- Claims 1-14, 16-24, 26-30, and 32-35 remain rejected under 35 USC 102 and 103.

\* \* \* \* \*

### ***Terminal Disclaimer***

The terminal disclaimer filed on 5 December 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application Numbers 10/645,079 and 10/949,833 has been reviewed and is accepted. The terminal disclaimer has been recorded.

\* \* \* \* \*

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14, 17-19, 24, and 30 remain rejected under 35 U.S.C. 102(b) as being anticipated by Slavtcheff, *et. al.* (U.S. Patent No. 6,451,331).

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Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see col. 2, lines 10-30).

The disclosed article is the instant article as claimed:

- the effervescent composition of instant claims 1, 24, and 30 (see col. 2, line 16);
- the liquid-permeable first layer comprising a web (as defined in paragraph 0016 of the instant specification) layer of instant claims 1, 24, and 30 (see col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2);
- the cleansing composition (surfactant) of instant claims 1, 24, and 30 (see col. 2, line 24);
- the pouch comprising a second layer comprising at least two webs associated with an effervescent composition of instant claim 2, 25, and 31 (see col. 3, lines 54-56; figure 2);
- the pouch made of the non-woven material of instant claim 3 (see col. 3, line 6);
- the laminate comprising a second layer comprising at least two webs and effervescent composition associated with the webs of instant claim 4 (see col. 2, line 67 – col. 3 line 9; col. 3, lines 32 and 46-56; figure 2).
- the laminate made of the non-woven material of instant claim 5 (see col. 3, line 6);
- the layers bonded together about the perimeter of the article of instant claim 6 (see col. 3, lines 48-49);

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- the at least about 1.5% of effervescent composition of instant claim 7 (see col. 4, line 62);
- the effervescent composition comprising the alkaline and acidic materials of instant claim 8 (see col. 4, lines 14-16);
- the alkaline material, *inter alia*, the azides of instant claim 9 (see col. 4, lines 20-25);
- the alkaline material, *inter alia*, the sodium bicarbonate of instant claim 10 (see col. 4, lines 20-25);
- the acidic material, *inter alia*, the toluene sulfonic acid of instant claim 11 (see col. 4, lines 20-25);
- the acidic material, *inter alia*, the succinic acid of instant claim 12 (see col. 4, lines 20-25);
- the about 1 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 13 (see col. 4, lines 24-26);
- the about 0.5 weight percent to about 80 weight percent of the total weight of the effervescent composition of alkaline material of instant claim 14 (see col. 4, lines 50-53);
- the cleansing composition on at least one surface of the first layer of instant claim 15 (see col. 2, line 24);
- the cleansing composition consisting of, *inter alia*, the anionic lathering surfactants of instant claim 17 (see col. 5, line 3);

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- the anionic lathering surfactants consisting of, *inter alia*, the taurate phosphates of instant claim 18 (see col. 5, line 2);
- the hard water tolerant surfactants consisting of, *inter alia*, the nonionic lathering surfactants of instant claim 19 (see col. 5, line 4);

The Slavtcheff, *et. al.* reference is silent with respect to the "Steady Flash Lather Volume" of instant claim 1, the "Steady Total Lather Volume" of instant claim 24, and the "Rinsability Percent" of instant claim 30. Applicant's article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

\* \* \* \* \*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, 20-23, 24, 26-29, 30, and 32-35 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bries, *et. al.* (U.S. Patent No. 5,110,843).

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Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant application in that it teaches neither the third layer of instant claims 20, 26, and 32, nor the fourth layer of instant claims 22, 28, and 34.

Bries, *et. al.* teach a cleaning article comprising multiple layers (see col. 5, lines 23-40).

The disclosed article may contain a layer comprising a cleaner or detergent, as recited in instant claims 21, 23, 27, 29, 33, and 35 (see col. 5, lines 49-52).

Bries, *et. al.* explain that multiple layers are beneficial for "...support, reinforcement, strength, abrasiveness, etc." See col. 5, lines 49-52.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a third and fourth layer to the second layer of the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third layer to the cleansing article for, e.g., support, reinforcement, strength, and abrasiveness, as explained by Bries, *et. al.*

\*

2. Claims 1, 2, 22, 23, 28, 29, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff, *et. al.* in view of Bergquist, *et. al.* (U.S. 2003/0064042 A1).

Slavtcheff, *et. al.* disclose a layered effervescent article for cleansing body surfaces (see above).

The Slavtcheff, *et. al.* reference differs from the instant application in that it does not teach the high loft material of instant claims 22, 23, 28, 29, 34, and 35.

Bergquist, *et. al.* teach use of a high loft material in a personal cleansing article (see paragraph 0014).

Bergquist, *et. al.* explain that use of a high loft material in a personal cleansing article imparts the benefits of increased aeration and improved latherability (see paragraph 0015).

The Bergquist, *et. al.* reference is silent with respect to the density of the high loft material recited in instant claims 22, 28, and 34. Applicant's article is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

The Bergquist, *et. al.* reference does not teach the thickness of high loft material recited in instant claims 22, 28, and 34; however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable thickness through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thickness is critical. "[W]here the general conditions of a claim are disclosed in the prior



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art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant thickness.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add a high loft material to the claimed article. One of ordinary skill in the art at the time the invention was made would have been motivated to add the third high loft material for the benefits of increased aeration and improved latherability, as explained by Bergquist, *et. al*.

\* \* \* \* \*

### ***Response to Arguments***

Applicant's arguments filed 5 December 2006 have been fully considered but they are not persuasive.

\*

### **35 USC 102**

Applicants argue that, “Slavtcheff does not teach an article for cleansing body surfaces that comprises cleansing composition and an effervescent composition which are in separate locations within the article.” See remarks, page 10.

Examiner respectfully submits that applicants are not explicitly claiming separate locations for the cleansing composition and the effervescent composition.

Instant claim 1 recites the open language “comprises.” While the claim directs certain compositions to be located on certain layers, the open construction of the claim

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precludes neither the effervescent composition, nor the cleansing composition from any of the layers. As such, examiner respectfully submits that Slavtcheff anticipates the instant application, as claimed.

\*

**35 USC 103**

1. Applicants argue that, "Slavtcheff does not teach an article for cleansing body surfaces that comprises cleansing composition and an effervescent composition which are in separate locations within the article." See remarks, page 10.

Examiner respectfully submits that applicants are not explicitly claiming separate locations for the cleansing composition and the effervescent composition.

Instant claim 1 recites the open language "comprises." While the claim directs certain compositions to be located on certain layers, the open construction of the claim precludes neither the effervescent composition, nor the cleansing composition from any of the layers.

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2. Applicants argue that, "...one of ordinary skill in the art would not be motivated by Bries to separate the surfactant and effervescent composition of Slavtcheff, because Bries does not teach an article that comprises an effervescent composition. See remarks, page 11.

Examiner respectfully submits that the secondary reference Bries is invoked merely to show that cleaning articles comprising multiple layers were known in the art at the time the instant application was filed. Bries is not used to show separation of surfactant and effervescent compositions.

3. Applicants argue that, "Slavtcheff does not teach an article for cleansing body surfaces that comprises cleansing composition and an effervescent composition which are in separate locations within the article." See remarks, page 11.

Examiner respectfully submits that applicants are not explicitly claiming separate locations for the cleansing composition and the effervescent composition.

Instant claim 1 recites the open language "comprises." While the claim directs certain compositions to be located on certain layers, the open construction of the claim precludes neither the effervescent composition, nor the cleansing composition from any of the layers.

4. Applicants argue that, "Bergquist does not teach or suggest the separation of the surfactant and effervescent composition. See remarks, page 12.

Examiner respectfully submits that the secondary reference Bergquist is invoked merely to show that use of high loft materials in personal cleansing articles was known

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in the art at the time the instant application was filed. Bergquist is not used to show separation of surfactant and effervescent compositions.

\* \* \* \* \*

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

★

### ***Correspondence***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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